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May 10, 2024

VIA ELECTRONIC MAIL

Clerk of Council
Clerkofcouncil@la.gov
City Hall - Room 1E09
1300 Perdido Street
New Orleans, LA 70112

**Re: Rulemaking Proceeding to Establish Rules for Community Solar Projects
(CNO Docket No. UD-18-03)**

Dear Clerk of Council:

Attached please find Entergy New Orleans, LLC's ("ENO") Comments Regarding Revised Form CSG-4 and Proposed Rate Schedule Options Pursuant to Resolution No. 24-137 for filing in the above-referenced docket. ENO submits this filing electronically and will submit the requisite original and number of hard copies once the Council resumes normal operations or as you direct.

Thank you for your assistance in this matter, and please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Leslie LaCoste', written over a light blue rectangular background.

Leslie M. LaCoste

LML/jlc

Enclosures

cc: Official Service List UD-18-03 (*via electronic mail*)

**BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS**

IN RE: RESOLUTION AND ORDER	)	
RELATED TO MADISON ENERGY	)	DOCKET NO. UD-18-03
INVESTMENTS, INC. MOTION TO	)	
AMEND COMMUNITY SOLAR RULES	)	

**ENTERGY NEW ORLEANS, LLC’S COMMENTS REGARDING
REVISED FORM CSG-4 AND PROPOSED RATE SCHEDULE
OPTIONS PURSUANT TO RESOLUTION NO. 24-137**

Entergy New Orleans, LLC (“ENO” or the “Company”) respectfully submits its Comments Regarding the Revised Form CSG-4 and Proposed Rate Schedule Options Pursuant to Resolution No. 24-137 (“Resolution”) issued by the Council of the City of New Orleans (“Council”) on April 4, 2024. In response to ENO’s Compliance Filing dated January 12, 2024 (“Compliance Filing”), the Resolution seeks comments on two issues: the revised Form CSG-4 – Standard Offer Purchase Power Agreement (“PPA”), and ENO’s two proposed options for a revised Rate Schedule CSGF – Community Solar Generating Facilities.¹ ENO appreciates the opportunity to present these Comments. For the reasons discussed herein and in prior filings, ENO respectfully requests that the Council reject the intervenors’ proposals that would have ENO enter into an unfavorable PPA, and direct implementation of one of the two revised rate schedules that ENO proposed in its Compliance Filing.

¹ The Resolution does not expressly require ENO to file comments in response to its own Compliance Filing. Certain parties, however, have made filings well in advance of the May 10, 2024 deadline. Thus, out of an abundance of caution, ENO has filed these comments and reserves the right to submit additional comments, particularly on the issue of consolidated billing should the Council desire, which issue is beyond the scope of the comments requested in the Resolution.

BACKGROUND

Following a lengthy procedural schedule and much consideration among all stakeholders, the Council revised its Community Solar Rules (“Rules”) in Resolution No. R-23-507 issued in November 2023. Thereafter, as directed by the Council, ENO made its Compliance Filing in January 2024 that reflected changes included in the revised Rules approved by the Council. Now only a few months later, various intervenors have belatedly proposed additional sweeping and self-serving changes. Indeed, several proposals seem designed to upend the well-balanced policy objective approved by the Council, which is *not* for a solar investor to receive a windfall, but for low-income and other residents to have access to solar power. The proposals are inappropriate and should be rejected.

Put simply, the intervenors are attempting to require ENO to agree to an unfavorable PPA that would serve their interests and preferred business models to the detriment of ENO and its customers. Their requests – particularly their efforts to include unilateral rights of renewal, to reduce required project deposits, and to modify the terms under which deposits would be returned – would shift risks under the PPA from the Subscriber Organization (developer) to ENO and its customers (including non-participating customers, many of whom are low-income). This is not a fair result. In fact, their proposals largely constitute impermissible micromanagement of ENO’s utility business.² The Council has recognized that “while the Home Rule Charter of the City of New Orleans vests the Council with the authority to supervise, regulate and control all utilities providing service in the City, that authority does not allow the Council, *or other parties for that matter*, the ability to substitute their own decisions for those of the utility...[R]egulators are not

² Regulator “is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership.” *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri*, 262 U.S. 276, 289 (1923); *see also* 73B C.J.S. Public Utilities § 14 (“private right of ownership of such property remains and is not destroyed by the regulatory power”) (citations omitted).

the managers of the Company....Public Regulation must not supplant private management.”³ The Council should reject the intervenors’ proposals that seek to have ENO enter into an unfavorable PPA.

COMMENTS

A. Revised Form CSG-4—Standard Offer PPA

The Together New Orleans (“TNO”) and Coalition for Community Solar Access (“CCSA”) comments raise several issues in connection with Revised Form CSG-4, which is the PPA.

i. Changes to Subscription

TNO’s suggested change to Section 3.3 would add an unnecessary layer of additional oversight for the Council Utilities Regulatory Office (“CURO”) in the administration of the program.⁴ As drafted, Section 3.3 states that ENO has the unilateral right to reject changes to the Monthly Subscription Information submitted by the Subscriber Organization that violate key provisions of the Rules regarding characteristics of Community Solar Generating (“CSG”) Facilities, enumerated in subsections (a) through (d) of the PPA.⁵ As administrator of the Council’s program, ENO rightfully has the responsibility to determine whether a Subscriber Organization is complying with requirements, *e.g.*, no customer owning more than 40% interest in a CSG Facility or subscriptions meeting the minimum levels in the Rules.

³ Council Resolution R-17-332, *In re: Rulemaking Proceeding Regarding Integrated Resource Planning*, Docket No. UD-17-01, at p. 18 (quoting *Georgia Power Co. v. Georgia Pub. Serv. Comm’n*, 85 S.E. 2d 14 (Ga. 1954)) (emphasis added).

⁴ TNO Comments, p. 2.

⁵ The requirements captured in Section 3.3 a-d of Form CSG-4 are taken from the Rules, Section III(b)(1) and (3), Section IV(b)(4), and Section V(b).

Moreover, CCSA’s statement that, “The current provision grants ENO unilateral authority to refuse additions, deletions, or changes to subscriber lists, which could undermine the sustainability and development of community solar projects. This provision may also have the unintended consequence of giving ENO the ability to effectively void a contract between the provider and subscriber,” is misleading.⁶ There is no justifiable reason to change the current language as requested and to require CURO to weigh in on whether the Subscriber Organization has violated the plain meaning of the Rules. The four criteria enumerated in Section 3.3 are clear restrictions placed on CSG Facilities in the Rules. Unless the Council wants CURO to get involved every time a Subscriber Organization violates these fundamental provisions around subscription limits, the Council should reject these proposed revisions.

ii. PPA Renewals

The PPA originally approved by the Council included a 10 year term with two optional 5 year renewals, equaling 20 years total. No further renewals were contemplated beyond 20 years. In 2022, Madison Energy Investments (“MEI”) filed its Motion to Amend the Community Solar Rules, and requested, among other things, a change to a 20 year term rather than the existing 10 year term plus two 5 year renewals.⁷ In order to address concerns about obtaining financing in the absence of a stated 20 year term, in Resolution No. R-23-507, the Council recently approved the requested change for the PPA in Section 4.1 to reflect a 20 year term.

Now, however, only a few months after the Council granted the requested 20 year term, intervenors are pushing for an even longer term. They want the unilateral option to renew the PPA

⁶ CCSA Comments, p. 2.

⁷ Motion of Madison Energy Investments to Amend Community Solar Rules, filed July 13, 2022.

for up to 10 more years, for a total of 30 years.⁸ The possibility of renewals beyond a 20 year term was never raised by MEI or any other party in any prior pleadings in this docket.

The intervenors' belated request is a clear overreach, and the Council should reject it. Allowing a Subscriber Organization the unilateral right to a 30 year PPA places extraordinary risk on ENO and its customers, and goes far beyond the purpose of the community solar program to provide low-income and other residents with access to solar power. In fact, renewal terms are not included in utility-scale solar PPAs to which ENO or other Entergy Operating Companies are a party. While the intervenors point to New York's community solar program as a model,⁹ the compensation term that National Grid uses in the New York community solar program does not, to ENO's understanding, contemplate renewals beyond the initial term.

iii. Subscriber Organization Deposits

The Rules include provisions in Section 4.4 to protect customers from Subscriber Organizations that tie up space in the queue without executing on their projects in a timely manner. The Council set reasonable deposit requirements and timelines under which a Subscriber Organization can recover its deposit provided it completes its project and puts it into service timely. If the Subscriber Organization fails to do so, the deposit is forfeited, with the funds used for the benefit of customers.

In their comments, intervenors recommend the deposit amount be adjusted to the lower of \$25/kw-AC or ENO's costs for holding space in the interconnection queue.¹⁰ A lower deposit shifts financial risk to ENO and its customers, even those not participating. This is not appropriate. Moreover, intervenors fail to provide any indication regarding how ENO's costs would be

⁸ TNO and Alliance Comments, p. 2.

⁹ TNO and Alliance Comments, p. 3.

¹⁰ TNO and Alliance Comments, p. 3.

calculated. Regardless, there should be no additional administrative burden placed on ENO to quantify and track such costs, particularly in a situation where there could be numerous CSG Facilities all seeking to interconnect in the same time period.

Intervenors also propose two substantive changes to the framework for when a Subscriber Organization can recover its deposit.¹¹ The first proposed change would start the clock upon execution of the Interconnection Agreement rather than when the Interconnection Application is approved. This change is not appropriate because execution of the Interconnection Agreement does not take place until after a project is complete and has passed a performance test as required by Entergy personnel. The second proposed change would revise the PPA to add a new defined term, Mechanical Completion, instead of Commercial Operation as originally drafted. This change is not appropriate because it would allow a Subscriber Organization to recover its deposit when its solar project is mechanically complete – even though the project may not be placed into Commercial Operation and produce power for months or even years. Moreover, introducing this new term could also have implications for the Interconnection Agreement (Form CSG-3) that result in conflicts among the documents involved in administering CSG Facilities. ENO suggests that this piecemeal approach to amending the PPA should be avoided, and any changes should be examined carefully before the Council takes further action.

iv. Maintenance and Repair of CSG Facilities and Force Majeure

Section 4.5 is included in the PPA to provide incentives for a Subscriber Organization to maintain its CSG Facility in working condition as much as reasonably possible in order for subscriber customers to be able to receive the benefits of participation and to ensure that the energy that is supposed to be available to serve the grid in fact shows up. Intervenors propose changes to

¹¹ TNO and Alliance Comments, p. 3.

Section 4.5 that would quadruple the time frames under which a CSG Facility could be out of service for an outage not attributable to Force Majeure, allowing up to two years instead of the six months currently provided, and up to a year for other technical issues instead of the three months allowed.¹² CCSA proposes to remove this section entirely because it maintains such customer protections are unnecessary.¹³ TNO and the Alliance for Affordable Energy (“Alliance”) go further to propose amendments to Section 6.3 that would double the time a CSG Facility can be out of service following a Force Majeure event to two years from one.¹⁴

In setting the time periods for maintenance and repair and Force Majeure, the Council recognized that customers would rely on the operational CSG Facilities to provide the benefits they expect from their subscriptions, and that ENO would need to be able to rely on the continued operation of CSG Facilities that would represent distributed supply side resources on the grid. The changes proposed by the intervenors would weaken the incentive for a Subscriber Organization to make repairs as expeditiously as possible and return their facilities to production, and also would inject additional uncertainties into system planning. These outcomes create unnecessary risks for ENO and its customers, and they should be rejected by the Council.

v. Recertification of Low-Income Qualification

The current requirement that a Subscriber Organization recertify the low-income status of its Subscribers each year recognizes the fact that customers’ situations may change over time and the program should reflect current information for purposes of calculating accurate Subscriber Credits. The Company, however, recognizes that this requirement could cause hardship to

¹² TNO and Alliance Comments, p. 4.

¹³ CCSA Comments, pp. 2-3.

¹⁴ TNO and Alliance Comments, p. 4.

participating customers as described in the comments from certain intervenors,¹⁵ and would not oppose the removal of this requirement provided the Council recognizes that this could result in some Subscribers receiving higher credits than they should over time.

B. Revised Rate Schedule CSGF

In its Compliance Filing, ENO presented two options for a revised Rate Schedule CSGF reflecting changes in the Rules approved by the Council, and ENO requested that the Council issue a resolution directing implementation of one of the two options. In their recent comments, TNO and the Alliance suggest that “nonbypassable riders” are not addressed in any “recent resolutions associated with Entergy New Orleans rates,” and therefore seek to strike that term from the proposed schedules. Their suggestion, in effect, would cause ENO to pay via a credit a portion of storm recovery charges that are required to be collected from customers pursuant to Council-adopted financing orders.¹⁶ The Council should reject this. In fact, recent Council resolutions address “nonbypassable riders” in relation to ENO’s rates.

For example, on October 6, 2022, via Resolution No. R-22-437 (As Corrected), the Council adopted a Financing Order (“2022 Financing Order”) under the Louisiana Electric Utility Storm Recovery Securitization Act (La. R.S. 45:1226-1240) (the “Securitization Act”) and approved the form of Riders SSCRII and SSCOII. Under the 2022 Financing Order, ENO’s electric customers must pay the principal of the storm recovery bonds issued under the authority of the 2022 Financing Order, together with interest and related financing costs, through storm recovery charges collected pursuant to Rider SSCRII. The 2022 Financing Order defines such storm recovery

¹⁵ TNO and Alliance Comments, p. 4.

¹⁶ TNO and Alliance Comments, pp. 5-6; *see also* CCSA Comments, p. 4.

charges as “nonbypassable charges paid by ENO’s electric customers.”¹⁷ The Council issued a substantially similar resolution a few years earlier.¹⁸

Storm recovery charges are collected by ENO pursuant to the 2022 Financing Order as an agent of and on behalf of the Louisiana Utilities Restoration Corporation (“LURC”), which uses the storm recovery charges to pay the loan made by the Louisiana Local Government Environmental Facilities and Community Development Authority (“Issuer”) to the LURC of the proceeds of the storm recovery bonds.¹⁹ Storm recovery charges collected pursuant to Rider SSCRII and the Rider SSCOII offsets to revenue are combined, and the combined amount is identified on customers’ bills in a line item identified for storm securitization cost riders.²⁰ The Council expressly found, in the 2022 Financing Order, that such nonbypassability provisions were “appropriate to ensure an equitable allocation of storm recovery costs among customers and to secure the desired highest possible bond credit rating for the storm recovery bonds.”²¹ The Council further determined that the storm recovery charges imposed by the 2022 Financing Order are “irrevocable, binding and nonbypassable charges.”²²

¹⁷ 2022 Financing Order, at 7.

¹⁸ On May 14, 2015, via Resolution No. R-15-193, the Council adopted a Financing Order (“2015 Financing Order”) under the Securitization Act and approved the form of Riders SSCR and SSCO. Under the 2015 Financing Order, ENO’s electric customers must pay the principal of the storm recovery bonds issued under the authority of the 2015 Financing Order, together with interest and related financing costs, through storm recovery charges. The 2015 Financing Order defines such storm recovery charges as “nonbypassable charges paid by ENO’s electric customers as a component of the monthly charge for electric service.” 2015 Financing Order, at 4.

¹⁹ 2022 Financing Order, at 7-8. The LURC was not involved in the 2015 securitization.

²⁰ 2022 Financing Order, at 38, 66.

²¹ 2022 Financing Order, at 65. *See also* 2015 Financing Order, at 58.

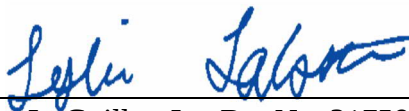
²² 2022 Financing Order, at 40, 42, 54. *See also* 2015 Financing Order, at 36, 49. As required by La. R.S. 45:1228(C)(5), the Council pledged that the 2022 Financing Order was “irrevocable until the infeasible (*i.e.*, not avoidable) payment in full of the storm recovery bonds and the financing costs.” 2022 Financing Order, at 57. The Council also covenanted, pledged, and agreed that the Council “shall not amend, modify, or terminate this Financing Order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust the storm recovery charges approved in this Financing Order, or in any way reduce or impair the value of the storm recovery property created by this Financing Order,” except as may be contemplated by a refinancing of the storm recovery bonds or the periodic

As documented by the Council, customers are required to pay nonbypassable storm recovery charges, and in return, they receive the benefits of securitization financing as compared to traditional methods of financing or recovery of utility storm costs. The intervenors' suggestion that ENO should be required to pay via a credit a portion of storm recovery charges is inconsistent with the Council's directives in the 2022 Financing Order (and the 2015 Financing Order), as well as the Securitization Act and its objectives of encouraging and facilitating the rebuilding of utility infrastructure damaged by storms.

CONCLUSION

ENO appreciates the opportunity to present these Comments. ENO respectfully requests that the Council reject the intervenors' proposals that would have ENO enter into an unfavorable PPA, and direct implementation of one of the two revised rate schedules that ENO proposed in its Compliance Filing.

Respectfully submitted,

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**ATTORNEYS FOR
ENTERGY NEW ORLEANS, LLC**

true-ups authorized by the 2022 Financing Order. 2022 Financing Order, at 58. The Council's pledge to that effect also is included in the 2015 Financing Order. See 2015 Financing Order, at 58.

CERTIFICATE OF SERVICE

Docket No. UD-18-03

I hereby certify that I have served the required number of copies of the foregoing pleading upon all other known parties of this proceeding individually and/or through their attorney of record or other duly designated individual, by: ☒ electronic mail, ☐ facsimile, ☐ hand delivery, and/or by depositing same with ☐ overnight mail carrier, or ☐ the United States Postal Service, postage prepaid.

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New Orleans, Louisiana, this 10th day of May 2024.



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